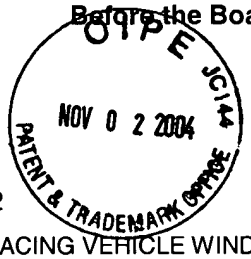
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**Before the Board of Patent Appeals and Interferences**




In re Patent Application of

MAYO et al.

Serial No. 10/083,637

Filed: February 27, 2002

Title: METHOD OF REPLACING VEHICLE WINDOWS IN VIEW OF WARRANTY CLAIMS

Atty Dkt. 3691-368
C# M#

TC/A.U.: 3627

Examiner: Chilcot, Richard E.

Date: November 2, 2004

**Mail Stop Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**
Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting applicant's claim(s). ($340.00) $

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application ($ 340.00) $ 340.00

☐ Credit for fees paid in prior appeal without decision on merits -$ ( )

☐ A reply brief is attached in triplicate under Rule 41.41 **(no fee)**

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s) **($110.00/1 month**; $430.00/2 months; **$980.00/3 months**; $1530.00/4 months) $

**SUBTOTAL** $ 340.00

☐ Applicant claims "Small entity" status, enter ½ of subtotal and subtract -$( )
☐ "Small entity" statement attached.

**SUBTOTAL** $ 340.00

Less month extension previously paid on -$( 0.00)

**TOTAL FEE ENCLOSED** $ 340.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140.** A duplicate copy of this sheet is attached.

1100 North Glebe Road, 8th Floor
Arlington, Virginia 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
JAR:caj

NIXON & VANDERHYE P.C.
By Atty: Joseph A. Rhoa, Reg. No. 37,515

Signature: _____

OIPE
NOV 0 2 2004
PATENT & TRADEMARK OFFICE

AF/IZW

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

MAYO et al. Atty. Ref.: 3691-368

Serial No. 10/083,637 TC/A.U.: 3627

Filed: February 27, 2002 Examiner: Chilcot, Richard E.

For: METHOD OF REPLACING VEHICLE WINDOWS IN VIEW OF WARRANTY CLAIMS

* * * * * * * * * * * * * * * * * * * * * * * * *

November 2, 2004

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

## APPEAL BRIEF

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

## REAL PARTY IN INTEREST

The real party in interest is Guardian Industries Corp., a corporation of the State of Michigan, in the United States of America.

11/03/2004 KBETEMA1 00000015 10083637
01 FC:1402 340.00 OP

## RELATED PROCEEDINGS

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

## STATUS OF CLAIMS

Claims 1-12 are pending and have been rejected. No claims have been substantively allowed. Thus, claims 1-12 (all pending claims) are on appeal.

## STATUS OF AMENDMENTS

No amendments have been filed since the date of the Final Rejection. However, the Response After Final filed September 2, 2004 has been entered and considered by the Examiner as evidenced by the Advisory Action dated October 8, 2004.

## SUMMARY OF EXAMPLE EMBODIMENTS OF THE INVENTION

For purposes of example only and without limitation, certain example embodiments of this invention relate to a method of handling vehicle window warranty claims such a vehicle windshield warranty claims.

*(a) Background*

Vehicles (e.g., cars, trucks, sport utility vehicles, etc.) commercially sold typically have a manufacturer warranty which covers certain damage to windows of the vehicle. An example warranty may last for 3 years and/or 36,000 miles in certain instances (e.g., ¶ 0002). However, manufacturer warranties do not cover all types of window damage. For example, according to certain example manufacturer warranties, stress or strain fractures in a vehicle windshield with no obvious point of object impact are legitimate warranty claims intended to be covered by the manufacturer warranty. This is because stress or strain fractures in a vehicle window (e.g., windshield) are often caused by improper window installation by the vehicle manufacturer on the vehicle assembly line (example

vehicle manufacturers include Daimler-Chrysler, Ford, General Motors, Audi, Volkswagen, BMW, and the like) (e.g., ¶ 0003). Another example window problem/issue intended to be covered by the manufacturer warranty is the presence of significant air bubble(s) (e.g., in a vehicle windshield). However, other types of vehicle window damage such as impact damage (e.g., damage caused by a rock/stone hitting a vehicle windshield during vehicle operation) are not intended to be covered by the manufacturer warranty (e.g., ¶ 0004). Instead, such other types of damage (e.g., impact damage) are the responsibility of the vehicle owner and/or operator, and not the vehicle manufacturer. Unfortunately, the way that vehicle window warranty claims are conventionally handled results in the vehicle manufacturer being billed for many damaged windows that are not intended to be covered by the manufacturer warranty (e.g., ¶ 0005).

Figure 1 of the instant application is a flow chart illustrating how vehicle window warranty claims are typically handled. The customer (e.g., vehicle owner and/or operator) first discovers a glass issue with a window(s) (see step A in Fig. 1), such as stress or strain fractures with no obvious point of impact, the presence of air bubbles in the window, and/or damage due to the impact of a rock or the like (e.g., ¶ 0006). The customer then visits a vehicle dealer, where the dealer writes up a warranty claim based on the glass issue (see step B in Fig. 1). Unfortunately, vehicle dealers typically do not have glass experts or technicians on hand to determine the cause of the glass issue. Therefore, in step B of Fig. 1, no root cause of the glass issue is established (e.g., ¶ 0007). In other words, the vehicle dealer often does not attempt to (or cannot) differentiate between the different types of damage discussed above (e.g., ¶ 0007). Unfortunately, this

means that many types of glass issues (e.g., impact damage) not intended to be covered by the manufacturer warranty are nonetheless ultimately paid for by the vehicle manufacturer(e.g., ¶ 0007).

Still referring to Fig. 1, after the dealer writes up the warranty claim, a new window is needed. Typically, the vehicle manufacturer or one of its divisions (e.g., MOPAR, which is Daimler-Chrysler's Service Parts Division) orders replacement windows from a window supplier (e.g., Guardian Industries, PPG, Sekurit, Asahi, or Pilkington) (step C in Fig. 1) (e.g., ¶ 0008). Vehicle manufactures typically keep on hand a large inventory of replacement windows for its vehicles. The dealer subcontracts its services to the vehicle manufacturer (e.g., Daimler-Chrysler) (step D in Fig. 1), and is paid for the same by the vehicle manufacturer (e.g., ¶ 0008). Glass retailers typically perform the actual replacing of the vehicle window; the glass retailer orders the replacement window from the vehicle manufacturer (step E in Fig. 1), and when in receipt of the same replaces the damaged window with the new window on the customer's vehicle (step F in Fig. 1). After being billed by the retailer, the dealer submits the warranty claim to the vehicle manufacturer (step G in Fig. 1), and the vehicle manufacturer pays the dealer accordingly (e.g., ¶ 0009). The vehicle with the replacement window therein is returned to the customer (step H in Fig. 1).

Unfortunately, it can be seen that in the methodology of Fig. 1, the vehicle manufacturer often ends up paying for vehicle window warranty claims that are not intended to be covered by the manufacturer warranty (e.g., ¶ 0010). This is largely because there is no system in place for determining the true cause of the window damage (or issue) and proceeding accordingly. Those skilled in the art will appreciate that there

exists a need in the art for an improved method or technique for handling vehicle window warranty claims, and replacing windows accordingly, in a manner such that the vehicle manufacturer does not end up paying for so many window claims that are not intended to be covered by the manufacturer warranty (e.g., ¶ 0011).

*(b) Example Embodiments of Invention*

According to certain example embodiments of this invention, a method of handling vehicle window warranty claims such a vehicle windshield warranty claims is provided. According to the method, a customer takes a vehicle having window damage to a retailer (e.g., ¶ 21). A glass expert and/or technician at the retailer visually analyzes the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the vehicle window being subject to impact damage from an object impacting the window (e.g., ¶ 22).

When (a) or (b) is determined, then a manufacturer warranty claim is processed for the customer, the claim relating to the window in either a first manner or a second manner different than the first manner depending upon whether the glass expert and/or technician determines (a) or (b) (e.g., ¶ 24-26). Thus, the window can be replaced under the warranty. However, the customer is informed that the damage is not covered by the manufacturer warranty when the glass expert and/or technician determines (c) (e.g., ¶ 27). In such a situation, the vehicle manufacturer need not be charged for the damage.

The retailer replaces the window in instances of each of (a), (b) and (c), but the retailer orders a replacement window from a different source depending on whether the glass expert and/or technician determines (a) or (c).

In certain example embodiments, the method includes the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c). In certain embodiments, the method includes a retailer periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c).

## ISSUES (GROUNDS OF REJECTION)

1. Claims 1-4 stand rejected under 35 U.S.C. Section 103(a) over Li (US 6,609,050).

2. Claims 5-12 stand rejected under 35 U.S.C. Section 103(a) over Li (US 6,609,050) in view of Busche (US 6,493,723).

## ARGUMENT

It is axiomatic that in order for a reference to anticipate a claim, it must disclose, teach or suggest each and every feature recited in the claim. See, e.g., Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). The USPTO has the burden in this respect.

Moreover, the USPTO has the burden under 35 U.S.C. Section 103 of establishing a *prima facie* case of obviousness. In re Piasecki, 745, F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). It can satisfy this burden only by showing that some objective teaching in the prior art, or that knowledge generally available to one of ordinary skill in the art, would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Before the USPTO may combine the disclosures of the references in order to establish a *prima facie* case of obviousness, there must be some suggestion for doing so. In re Jones, 958 F.2d 347 (Fed. Cir. 1992). Even assuming, *arguendo*, that a given combination of references is proper, the combination of references must in any event disclose the features of the claimed invention in order to render it obvious.

*Claim 1*

Claim 1 stands rejected under 35 U.S.C. Section 103(a) as being allegedly unpatentable over Li. This Section 103(a) rejection should be reversed for at least the following reasons.

Claim 1 requires "analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the vehicle window being subject to impact damage from an object impacting the window; when (a) or (b), processing a manufacturer warranty claim from the customer relating to the window in either a first manner or a second manner different than the first manner depending upon whether the glass expert

and/or technician determines (a) or (b), so that the window can be replaced under the warranty; and informing the customer that the damage is not covered by the manufacturer warranty when . . . (c)."

Thus, it can be seen that claim 1 requires differentiating between (a), (b) and (c) at the retailer, and then adapting a different subsequent process based on which was determined. The cited art fails to disclose or suggest this.

Li simply discloses a computer-networked system for handling warranty claims such as engine rattling, vehicle shaking, dents, and so forth. There is absolutely nothing in Li which discloses or suggests differentiating between types of window damage (a), (b) and (c) at the retailer regarding vehicle windows, and then adapting a different subsequent process according to which was determined as required by claim 1. Li is entirely unrelated to the invention of claim 1 in these respects. There cannot possibly be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 1.

*Claim 2*

Claim 2 requires that "the retailer replacing the window in instances of each of (a), (b) and (c), but the retailer ordering a replacement window from a different source when the glass expert and/or technician determines (a) as opposed to (c)." The cited art discloses nothing akin to these requirements of claim 2. Again, there cannot possibly be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 2.

*Claim 3*

Claim 3 requires "the retailer replacing the window in instances of each of (a) and (b), but a different billing and/or paying procedure being carried out depending upon whether the glass expert and/or technician determines (a) or (b)." The cited art discloses nothing akin to these requirements of claim 3. Again, there cannot possibly be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 3.

*Claim 4*

Claim 4 requires "the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c)." The cited art fails to disclose or suggest these requirements of claim 4. Again, there cannot be any *prima facie* case of obviousness in this respect, since the art is entirely silent on key aspects of the invention of claim 4.

*Claim 5*

Claims 5-12 stand rejected under Section 103(a) as being allegedly unpatentable over Li in view of Busche. This Section 103(a) rejection should be reversed for at least the following reasons.

Claim 5 requires "the retailer periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c)." Again, the cited art fails to disclose or suggest anything like this. There is nothing in either Li or Busche which discloses or suggests periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass

expert and/or technician determining (c). Again, the Section 103(a) rejection of claim 5 lacks merit.

*Claim 8*

Claim 8 requires "making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage; the retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician, the listing differentiating between windows damaged as a result of (a), (b), or (c)." Again, as explained above with respect to Li, Li fails to disclose or suggest these aspects of claim 8.

The cited art (both cited references) fails to disclose or suggest making any determination as to whether window damage is a result of activity by (a), (b) or (c) as required by claim 8. The cited art is entirely silent in this respect. Furthermore, the art fails to disclose or suggest a retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician where the listing differentiates between windows damaged as a result of (a), (b), or (c). Nothing in either cited reference discloses or suggests any of the above aspects of claim 8.

*Claim 12*

Claim 12 requires "making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact

damage; and providing the vehicle manufacturer a listing of vehicles analyzed, the listing differentiating between windows damaged as a result of (a), (b), or (c)."

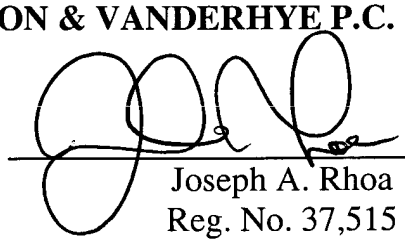
The cited art, either cited reference, fails to disclose or suggest making any determination as to whether window damage is a result of activity by (a), (b) or (c) as required by claim 12. The cited art is entirely silent in this respect. Moreover, the cited art also fails to disclose or suggest (in either cited reference) providing a vehicle manufacturer a listing of vehicles analyzed where the listing differentiates between windows damaged as a result of (a), (b), or (c). The cited art is entirely unrelated to claim 12 in each of these respects, and clearly fails to disclose or suggest the invention thereof.

## CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: 

Joseph A. Rhoa
Reg. No. 37,515

JAR:caj
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

## APPENDIX

## CLAIMS ON APPEAL

1. A method of handling vehicle window warranty claims, the method comprising:

a customer taking a vehicle having window damage to a retailer;

a glass expert and/or technician at the retailer visually analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the vehicle window being subject to impact damage from an object impacting the window;

when (a) or (b), processing a manufacturer warranty claim from the customer relating to the window in either a first manner or a second manner different than the first manner depending upon whether the glass expert and/or technician determines (a) or (b), so that the window can be replaced under the warranty; and

informing the customer that the damage is not covered by the manufacturer warranty when the glass expert and/or technician determines (c).

2. The method of claim 1, further comprising:

the retailer replacing the window in instances of each of (a), (b) and (c), but the retailer ordering a replacement window from a different source when the glass expert and/or technician determines (a) as opposed to (c).

3. The method of claim 1, further comprising:

the retailer replacing the window in instances of each of (a) and (b), but a different billing and/or paying procedure being carried out depending upon whether the glass expert and/or technician determines (a) or (b).

4. The method of claim 1, further comprising:

the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c).

5. The method of claim 1, further comprising the retailer periodically providing the vehicle manufacturer a list of all turned away warranty claims resulting from the glass expert and/or technician determining (c).

6. The method of claim 1, further comprising the retailer providing the vehicle manufacturer a listing of warranty claim attempts differentiated by at least (a), (b), and (c).

7. The method of claim 1, further comprising the vehicle manufacturer storing warranty claims in a manner so as to differentiate between claims where the glass expert and/or technician determined (a) and claims where the glass expert and/or technician determined (b).

8. A method handling warranty claims relating to vehicle windows, the method comprising:

a customer taking a vehicle having window damage to a retailer;

at least one glass expert and/or technician at the retailer visually analyzing the window damage of the vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage;

the retailer providing the vehicle manufacturer a listing of vehicles analyzed by the at least one glass expert and/or technician, the listing differentiating between windows damaged as a result of (a), (b), or (c).

9. The method of claim 8, further comprising the vehicle manufacturer storing warranty claims in a manner so as to differentiate between claims where the glass expert and/or technician determined (a) and claims where the glass expert and/or technician determined (b).

10. The method of claim 8, further comprising the retailer ordering a replacement window from the vehicle manufacturer when the glass expert and/or technician determines (a) or (b), and the retailer ordering a replacement window from a window

supplier different than the vehicle manufacturer when the glass expert and/or technician determines (c).

11. The method of claim 8, further comprising the retailer replacing the customer's damaged window with a replacement window.

12. A method handling warranty claims relating to vehicle windows, the method comprising:

visually analyzing window damage of a vehicle and making a determination as to whether the window damage is a result of activity by: (a) a vehicle manufacturer that assembled the vehicle, (b) a glass or window supplier that supplied the window to the vehicle manufacturer, or (c) the customer who owns or operates the vehicle where the vehicle was subjected to impact damage; and

providing the vehicle manufacturer a listing of vehicles analyzed, the listing differentiating between windows damaged as a result of (a), (b), or (c).